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ANALYSIS OF COMPANY LAW: A STEP TOWARDS BETTER GOVERNANCE

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ABSTRACT

Before independence of India the first companies Act was passed in 1850 based on the English companies Act 1844. After that companies Act 1857, 1866, 1913 was enacted. After independence the first companies Act was passed in 1956. The greatest corporate failure of India was the Satyam scandal which came to public on January, 2009. Under this backdrop a new rigid Act was necessary to pass in India. The new companies Act of India is passed in the year 2013. Enactment of any corporate law changes the legal and task environment of the corporate sector. There were many drawbacks in the companies Act 1956. This paper will analyze whether the new companies Act 2013 is able to overcome the drawbacks in the in the companies Act 1956. This paper intends to bring about how effectively the companies Act 2013 helps in fulfilling the corporate Governance and sustainable development by comparing the companies Act 1956 and the companies Act 2013. This paper is basically analytical in nature. For analysis, information have been collected from various secondary sources such as Published research journals, website of the ministry of corporate affairs, Government of India, newspaper articles, books and interaction with the stakeholders. It is found that different new rules have been introduced like, concept of key managerial Personnel, women director, corporate social responsibility, one person company, special court for resolving offences, class action suit etc. Provisions of some penal and punitive measures also mentioned in different sections of the companies Act 2013. The new Act confers greater power and responsibility in the governance of the company. It has been concluded that the new companies Act 2013 will be fruitful if it is properly implemented. Central Government should take rigid action to resolve the corporate scandal.

KEYWORDS: Company, corporate governance, sustainability Provision, Penalty, stakeholders.

INTRODUCTION:

Based on the English companies Act 1844 of joint stock companies was passed in 1850. The first companies Act introduced the distinct legal entities of joint stock companies but did not recognized the limited liability concept. The concept of limited liability was first recognized by the companies Act, 1857 for joint stock companies except banking companies. After the lapse of about 9 years, the companies Act, 1866 was passed in India. This Act was again amended in 1882. This Act continued for a long time till 1913. The companies Act, 1913 was also amended in 1936. After independence, The Government of India appointed a company law committee in 1950 under the chairmanship of Shri H.C.Bhava. On the basis of the recommendation of this committee, a bill to enact the companies Act, 1956 was introduced in Parliament and Indian companies Act, 1956 was passed. The new companies Act 2013 was signed by the President of India on 29th August 2013. The Act came into force on 12 September 2013. After that the companies amendment Act 2017 has been received the assent of the President of India on 3rd January 2018.

The greatest corporate failure of India was the 'Satyam scandal' which came to public on January, 2009. Under this backdrop a new rigid Act was necessary to pass in India. The enactment of the new Companies Act 2013 was a great effort of the Central Government to protect the interest of the stakeholders. The comparative analysis has been done between companies Act 1956 and companies Act 2013 to overview the some major changes in the new Act. This paper analyses whether the new companies Act 2013 is able to overcome the drawbacks in the companies Act 1956.

OBJECTIVES:-

1. The main objective of this paper is to understand the need of companies Act 2013 that is to analyze the deficiencies of companies Act 1956.

2. To understand the various developments of companies Act 2013 and its role in ascertaining better corporate governance in the country.

3. To understand the points where companies Act 2013 has got lend over companies Act 1956.

METHODOLOGY:

This paper is basically analytical in nature. This study is based on the information collected from various secondary sources like research journal, newspaper article, various websites including the website of the Ministry of Corporate Affairs Government of India, and personal interactions with the stakeholders.

LIMITATIONS OF THE STUDY:

1. The new Indian companies Act 2013 has gone through various amendments after 2013. The latest amendments have not been undertaken.

2. The conclusion has been derived based on the Comparative study between existing companies Act 1956 and the new companies Act 2013 only.

Comparative analysis and discussion of companies Act 1956 and Companies Act 2013

No.	Base of Comparison	Companies Act 1956	Companies Act 2013	Comparative Analysis.
1)	Structure	It has 13 Parts, 658 sections and 15 schedules.	It has 29 chapters, 470 sections and 7 Schedules	Both the Act gives various laws, rules regulations to control the working of business firms.
2)	One Person Company	There was no Provision of one Person company according to the Companies Act 1956	There is a Provision of one Person Company. (section 2(62) of companies Act 2013)	This will increase the number of business firms.
3)	Restriction on issue of shares at a discount	Companies have a Power to issue shares at a discount (Section 79 of the companies Act, 1956)	Companies have no power to issue shares at a discount except Sweat equity shares subject to fulfillment of certain conditions. (Section 53 of Companies Act, 2013).	If any company violets the provision shall be Punishable with a fine of one lakh to five lakh rupees.
4)	Power of company to purchase its own securities.	There was a power of company to purchase its own securities. (Section 77A of the companies Act, 1956)	Company can purchase its own shares or other securities out of free reserves, security Premium account, or the proceeds of any securities.(Section 68 of companies Act 2013).	There is a restriction of fund to purchase companies own shares.
5)	Acceptance of Public deposits.	Without issuing an advertisement, deposits are not to be invited (Section 58A of Companies Act, 1956)	Acceptance of Public deposit is strictly Prohibited. (Section 73)	It is a good step to protect the depositor.

6)	Corporate Social Responsibility	This provision was not there.	Every Company having a net profit of Rs. 5 Crore or more or turnover of Rs. 1000 crore or more, or net worth of Rs. 500 crore or more during any financial year shall constitute a corporate social responsibility committee consisting 3 or more directors. (Section 135)	Companies will be more responsible to the Society.
7)	Financial year	Companies were allowed to choose its financial year.	Now the financial year should commerce from 1st April and ends on 31st march for all companies.	It will bring uniformity.
8)	Key managerial Personnel	Key managerial personnel did not include company Secretary.	Key managerial personnel include company secretary also.	The activity of company secretary has been enlarged .
9)	Associate company	No provision was there.	The concept of associate company is introduced. (Section 2(6))	Associate company is not a subsidiary company.
10)	Functions of company secretary	No provision was there.	New Act clears the functions of company secretary. (Section 205)	The role of company Secretary will be clear.
11)	Committee of creditors.	There was no provision.	There is a provision of formation of committee of creditors. (Section 257)	This will help to save the interest of creditors.
12)	Special Court	There was no provision.	Special court has been introduced to speed up verdict for offence. (Section 435)	Judicial steps can be taken timely.
13)	Secretarial audit	There was no provision.	Secretarial audit is required. (Section 204)	This will bring better governance.
14)	Holding First Annual General Meeting	The maximum time limit for holding 1st Annual General Meeting was 18 months from incorporation or 9 months from closure of accounts whichever is earlier.	The maximum time limit is 9 months from closure of accounts.	The earlier provision of 18th Months has been abolished.
15)	Directorship	Maximum no. of directorship was 15 companies.	As per this Act Maximum no of directorship is 20 out of which 10 can be public companies.	Directorship has been enhanced.
16)	Maximum no of director	Maximum no of director was 12. More directors can be appointed by the approval of central government.	Maximum no of director is 15 More directors can be appointed by Passing special resolution in the board meeting.	Now the approval of central government is not required. It will bring a better self- governance of the companies.
17)	Women director.	Women director was not mandatory.	At least one woman director is compulsory in every board.	The role of women increases in corporate sector.
18)	Certificate of commencement of business	It was applicable to public limited companies only.	This provision is applicable to all companies.	Every company is required to collect certificate of commencement of business.
19)	Different types of companies	There were only two companies – Public and Private.	There are three types of companies – public, private and one member company.	This will bring more companies.
20)	Maximum no of members of private company	Maximum numbers were 50.	Maximum no is 200.	More number of members will be required to form a private company.
21)	Fraud investigation office	There was no provision.	As per new Act central government by notification establish an office to investigate the fraud of companies. (Section 211)	The new Act will providing a transparent proceedings against fraud.
22)	Cost Audit	Cost audit was allowed in certain cases. (Section 233 B)	Central government may direct certain class of companies for cost Audit. (Section 148)	Cost audit standards will have to be maintained while conducting cost audit.
23)	Registration of director.	There was no specific provision.	Registration of director is must.	It will bring more transparency about the board.
24)	Object clause of Memorandum of Association	The object clause was divided into main object, incidental or other objects.	Memorandum of Association contains the object for which the company is incorporated.	In new companies Act there is no subdivision of object clause.
25)	Notice of Board Meeting	There was no specific time Period of notice.	7 day's notice is required to call board meeting.	The notice will reach to every member within stipulated time.
26)	Filing class action suit	There was no such provision.	This provision provides that if class of members, depositors, or any class of them conducts the business in any manner which are prejudicial to the interest of the company or its members, can file an application before the tribunal on behalf of the company or its members. (Section 245)	This is a good step for keeping the interest of the company and its stakeholders.

FINDINGS AND CONCLUSIONS:

Introduction of new companies Act 2013 will be helpful to regulate the business entity but the concern is about its implementation. No Act will be helpful if it is not properly implemented. There were many loopholes in the companies Act 1956. Companies Act 2013 overcomes some of the major loopholes of the companies Act 1956. The concepts of key managerial personnel, independent director, women director, one person company, restriction in issue of shares at a discount, restriction on acceptance of public deposit, corporate social responsibility, Uniformity in financial year, filing class action suit, associate company, committee of creditors, special court for offences , filing class action suit etc. have

newly introduced for better governance. Provisions of some punitive and penal actions in different sections of the companies Act 2013 will bring better self- governance to the business firms. The enactment of the new Companies Act 2013 was a great effort of the Central Government to protect the interest of the stakeholders.

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